

UIdaho Law Digital Commons @ UIdaho Law

Not Reported

Idaho Supreme Court Records & Briefs

9-15-2015

State v. Mays Appellant's Brief Dckt. 42973

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Mays Appellant's Brief Dckt. 42973" (2015). *Not Reported*. 2206.
https://digitalcommons.law.uidaho.edu/not_reported/2206

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender
I.S.B. #6555
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 42973, 42974 & 42975
)	
v.)	NEZ PERCE COUNTY
)	NOS. CR 2008-9884, CR 2009-6070 &
KEVIN E. MAYS,)	CR 2011-1300
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

In this consolidated appeal, Kevin E. Mays appeals from the district court's orders revoking probation in three cases. Mr. Mays asserts that probation was achieving its rehabilitative purpose and, therefore, the district court abused its discretion when it revoked probation.

Statement of the Facts & Course of Proceedings

Supreme Court Docket No. 42973 (district court case number CR 2008-9884 (*hereinafter*, 2008 case)), Supreme Court Docket No. 42974 (district court case number CR 2009-6070 (*hereinafter*, 2009 case)), and Supreme Court Docket No. 42975 (district

court case number CR 2011-1300 (*hereinafter*, 2011 case)) have been consolidated for appellate purposes.

In the 2008 case, Mr. Mays pleaded guilty to one count of stalking. (42973 R., pp.223-27.) The district court imposed a sentence of five years, with two years fixed, but suspended the sentence and placed him on probation for five years. (42973 R., pp.224-25.)

In the 2009 case, Mr. Mays pleaded guilty to one count of injuring jails. (42974 R., p.86.) The district court imposed a sentence of five years, with two years fixed, to be served concurrently to the sentence in the 2008 case, but suspended the sentence and placed Mr. Mays on five years of probation. (42974 R., p.87.)

In the 2011 case, Mr. Mays pleaded guilty to one count of stalking. (42975 R., p.83.) The district court imposed a sentence of four years, with two years fixed, but suspended the sentence and placed Mr. Mays on four years of probation. (42975 R., p.84.)

In 2012, Mr. Mays admitted to violating his probation in the 2011 case by being charged with driving under the influence. (42975 R., pp.102, 136.) The district court revoked Mr. Mays' probation and imposed the original sentence, but retained jurisdiction. (42975 R., p.146.) Following a successful rider, the court placed Mr. Mays on probation. (42975 R., pp.156-59; Addendum to Presentence Investigation Report, (*hereinafter*, APSI), pp.3-5.)

In 2014, Mr. Mays was charged with violating his probation in all three cases by violating a no contact order and threatening the protected party. (42975 R., pp.165-66.) Mr. Mays admitted to violating his probation. (Tr., p.8, L.2 – p.9, L.11.) At the

disposition hearing, Mr. Mays' friend Erlene Weber testified that the protected party in the case, Angelica Harrell, left threatening messages and texts for Mr. Mays. (Tr., p.14, Ls.2-20.) Mr. Mays' son, Kevin Mays, Jr., testified that people who he believed were associated with Ms. Harrell sent his father text messages saying that they knew where he was and they were going to hurt him. (Tr., p.17, L.14 – p.18, L.6.) He also testified his father takes medications that make him forget things. (Tr., p.19, Ls.4-12.) Jeremy Bovencamp, Mr. Mays' friend, testified that Mr. Mays had received threatening texts from Ms. Harrell. (Tr., p.23, Ls.12-25.) Mr. Bovencamp also testified that Mr. Mays' mental health had been deteriorating and sometimes Mr. Mays even had trouble recognizing him. (Tr., p.25, Ls.5-19.)

The district court revoked Mr. Mays' probation in all three cases and imposed the original concurrent sentences of five years, with two years fixed, in the 2008 case, five years, with two years fixed, in the 2009 case, and four years, with two years fixed, in the 2011 case. (Tr., p.39, Ls.1-14.)

Mr. Mays filed timely notices of appeal from the district court's orders revoking probation in all three cases. (42975 R., p.179; 42974 R., p.207; 42973 R., p.348.)

ARGUMENT

The District Court Abused Its Discretion When It Revoked Mr. Mays' Probation

Whether a willful violation of a condition of probation justifies revoking probation "is a question addressed to the judge's sound discretion." *State v. Adams*, 115 Idaho 1053, 1054 (Ct. App. 1989). However, "a judge cannot revoke probation arbitrarily." *Id.* at 1055. "[P]robation may be revoked if the judge reasonably concludes from the defendant's conduct that probation is not achieving its rehabilitative purpose." *Id.*

Further, I.C. § 19–2601(4) gives the district court the discretion to revoke a defendant’s probation, suspend his sentence, and retain jurisdiction so that he can participate in treatment and programming.

The appellate court “defers to the trial court’s decision unless an abuse of discretion is demonstrated.” *Adams*, 115 Idaho at 1055. This Court must consider the entire record, including the defendant’s conduct before and during probation, See *State v. Chapman*, 111 Idaho 149, 153–54 (1986). In addition, the district court must take into consideration the four goals of sentencing: the protection of society, deterrence, rehabilitation, and retribution. *State v. Pierce*, 150 Idaho 1, 5–6 (2010).

Mr. Mays is involved in a complicated family dynamic. He and the protected party named in the no-contact order, Ms. Harrell, have a child in common. (Presentence Investigation Report (*hereinafter*, PSI), p.11.)¹ Admittedly, the no-contact order only applies to him, but multiple witnesses testified that Ms. Harrell continuously contacts and harasses Mr. Mays. (Tr., p.14, Ls.2-20, p.17, L.14 – p.18, L.6, p.23, Ls.12-25.) Until his incarceration, Mr. Mays had custody of his two older children, and paid child support for the child he has with Ms. Harrell. (PSI, pp.10-12.) Mr. Mays also suffers from significant medical issues resulting from a head injury, and has also been diagnosed with Hepatitis C. (PSI, p.13.)

Mr. Mays is a responsible person and clearly has the ability to be successful on probation, but the fact that he shares a child with Ms. Harrell has made things difficult. Without minimizing his conduct, it is important to recognize the contact with Ms. Harrell

¹ For ease of reference, PSI page numbers refer to the electronic PDF document titled, “CONFIDENTIAL State vs. Kevin Eugene Mays Sr SC# 42974 Exhibits to the Clerk's Record,” which was made part of the electronic record in Supreme Court Docket No. 42974. It appears that Mr. Mays’s most recent PSI was prepared in 2009.

has been two-sided. Mr. Mays must take responsibility for his own actions, but a prison sentence is not necessary to address his behavior. Therefore, he contends that the district court abused its discretion when it revoked his probation.

CONCLUSION

Mr. Mays respectfully requests that this Court reduce his sentence as it deems appropriate, or that his case be remanded to the district court for a new disposition hearing.

DATED this 15th day of September, 2015.

_____/s/_____
ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of September, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

KEVIN E MAYS
INMATE #94739
ISCI
MEDICAL BUILDING 20 RM 11
LTC
PO BOX 14
BOISE ID 83707

JEFF M BRUDIE
DISTRICT COURT JUDGE
E-MAILED BRIEF

GREGORY HURN
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EDF/eas